IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/01/2003

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THE HONOURABLE MR. JUSTICE A. KULASEKARAN

C.R.P. (PD) No. 1435 of 2002
and
C.M.P. No. 12309 of 2002

Thirupathi ... Petitioner

-Vs-

Kothai Aachi ... Respondent

Revision under Section 115 of CPC against the order dated 26-04-2002 made in I.A. No. 76 of 2002 in O.S. No. 872 of 1996 on the file of II Additional District Munsif, Tirunelveli

!For Petitioner : Mr. V. Srinivasan

^For Respondent : Mr. S.P. Maharajan

:ORDER

The Plaintiff in O.S. No. 872 of 1996 before the II Additional District Munsif, Tirunelveli is the revision petitioner herein. The Plaintiff has filed the said suit for a declaration to declare that he is the adopted son of Late. Chockalinga Chettiar and his wife namely Kothai Achi, respondent herein. In the said suit examination of the witnesses of both sides were over and the case was posted for arguments. At that time, the respondent herein has filed an application I.A. No. 76 of 2002 under Order VIII Rule 9 CPC seeking permission of the Court to receive the additional written statement. The trial court, after hearing both sides has allowed the said petition, hence this revision.

2. Heard both sides. Mr. Srinivas, learned counsel appearing for the petitioner submitted that the trial court exceeded its jurisdiction and permitted the respondent to file her additional written statement without satisfying the requirements under Order 8 Rule 9 CPC; that the trial court failed to note the scope and power of the Court conferred under Section 21 of CPC; that the trial court completely overlooked that the respondent has submitted to the jurisdiction, hence estopped from questioning the jurisdiction belatedly which would cause prejudice to the petitioner's right; that the trial court erred in allowing the petition which was filed belatedly,

that too, after examination of witness on both sides were over; that the respondent has not explained the delay in filing the petition; that under Order 14 Rule 2 CPC as well as Section 21 CPC, the jurisdiction can be decided at the earliest possible opportunity, hence the application filed by the respondent ought to have been dismissed by the trial court and prayed for setting aside the impugned order dated 26-04-2002.

3. Mr. S.P. Maharajan, learned counsel appearing for the respondent submitted that the trial court has no territorial jurisdiction to try the case, which plea was not mentioned in the written statement by oversight; that the said plea would not change the character or cause of action of the suit; that the trial court has rightly held that receiving the additional written statement would not cause any prejudice to the petitioner; that the trial court further rightly found that the jurisdiction of the Court could be decided only after trial, while so the impugned order is perfectly valid.

4. The trial court allowed the petition filed by the respondent herein on the ground that though examination of witnesses on both sides are over, it is the bounden duty of the Court to decide the vital question of law namely Jurisdiction of the Court which could be done only after trial and if the additional written statement sought to be filed is not received, it would amount to denial of opportunity to the party from bringing to the notice the vital issue involved in the case. It is also pointed out by the trial court that receiving additional written statement neither cause any prejudice to the petitioner nor change the character of the suit.

5. The respondent herein intended to canvass in his additional written statement that the Court within its jurisdiction the office of the Sub-registrar, who registered the deed of adoption located and the place where the adoption ceremonies conducted is competent to try the case. According to the respondent, both the causes of action not taken place within the jurisdiction of the court below.

6. Now, we look into the provisions of Section 21, Order VIII Rule 9 OF CPC

"21. Objections to Jurisdiction: - (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with

reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.

Order VIII Rule 9 – Subsequent Pleadings - No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court th ks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same."

7. Section 21 CPC relates to objection to jurisdiction of the Court. Section 21 begins with no objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity. If a party fail to object jurisdiction of the trial court, he is not permitted to canvass the same either before the appellate or revisional Court. The intention of enactment of Section 21 of CPC is where a Court has no jurisdiction over a litigation its order, however precisely certain and technically correct are mere nullities and can be declared to be void by every Court in which they may be presented. In case of initial lack of jurisdiction, no amount of consent or waiver on the part of the parties can create jurisdiction, where there is none. Hence, it is absolutely necessary to the parties to raise their objection before the Court of first instance. No doubt, it is incumbent on the parties to raise their objection relating to jurisdiction at the earliest possible opportunity and in all cases where issues are settled at or before such settlement.

8. Order 8 Rule 9 CPC enables the Court to accept a written statement filed at a later stage, even after settlement of issues upon such terms as it may think fit and proper, however, the Rule contemplates the leave of the Court before any party can present a further pleading after the written statement has been filed. This Rule invest the Court with widest possible discretion and enables it to accept additional written statement.

9. The learned counsel appearing for the petitioner submitted that the objection regarding jurisdiction was not taken up by the respondent herein prior to framing of issues or prior to commencement of trial thereby submitted to the jurisdiction, he is estopped from questioning the jurisdiction. I am unable to accede to this contention because the nature of the objection is regarding jurisdiction of the Court below which goes to the very root of the matter.

10. As I have already pointed out, when a Court has no jurisdiction over a litigation, no amount of consent or waiver on the part of the parties can create jurisdiction. A joint reading of Section 21 as well as Order 8 Rule 9 CPC would make it clear that any trial in the wrong Court would lead to failure of justice. Hence, I have no hesitation in confirming the

order passed by the trial court. However, in the interest of justice, due opportunity may be afforded to the petitioner to meet the averments in the additional written statement. I direct the trial court to dispose of the suit on merits uninfluenced by the order passed by this Court in this revision.

In the result, the revision is dismissed. No costs. Connected CMP is closed.

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Index : Yes
Internet : Yes

To
II Additional District Munsif
District Munsif Court